23-11648-H

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

SAMUEL BARNABY DYER CORIAT, SHEYLA DYER CORIAT, and PIERO DYER CORIAT,

Plaintiffs-Appellants

v.

UNITED STATES OF AMERICA,

Defendant-Appellee

ON APPEAL FROM THE JUDGMENT OF THE U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

BRIEF FOR THE APPELLEE

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1, counsel for the United States hereby certify that, to the best of their knowledge, information, and belief, the following persons and entities have an interest in the outcome of this appeal:

Avetta, Julie C., Attorney, Appellate Section, Tax Division, United States Department of Justice

Dyer Coriat, Piero, Plaintiff-Appellant

Dyer Coriat, Samuel, Plaintiff-Appellant

Dyer Coriat, Sheyla, Plaintiff-Appellant

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C-2 of 2

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STATEMENT REGARDING ORAL ARGUMENT

Pursuant to 11th Cir. R. 28-1(c) and Fed. R. App. P. 34(a), counsel for the United States respectfully inform this Court that they are prepared to present oral argument if the Court has questions that are not fully answered in the parties' briefs.

TABLE OF CONTENTS

Page

TABLE OF CITATIONS

Cases: **Page(s)**

Cases (cont.): **Page(s)**

Statutes: **Page(s)**

Other Authorities

* Cases or authorities chiefly relied upon have asterisks.

STATEMENT OF JURISDICTION

1. Jurisdiction in the District Court

On August 22, 2022, the Internal Revenue Service (IRS) issued summonses to Truist Bank and Wells Fargo Bank pursuant to treaty requests from the Government of Peru, to aid in determining the Peruvian income tax liabilities of Samuel Barnaby Dyer Coriat, Piero Martin Dyer Coriat, and Sheyla Dyer Coriat ("taxpayers") for tax years 2016, 2017, and 2018. (Doc. 25-1.)[1] Taxpayers filed timely petitions to quash the summonses on August 31, 2023 (Piero) and September 1, 2023 (Samuel and Sheyla). (Doc. 1; S. D. Fla. Case No. 22-cv-22785, doc. 1; Case No. 22-cv-22777, doc. 1.) *See* I.R.C. (26 U.S.C.) § 7609(b). The District Court had jurisdiction under I.R.C. § 7609(b)(2)(A), (h)(1), and 28 U.S.C. §§ 1331, 1340.

2. Jurisdiction in the Court of Appeals

The District Court consolidated taxpayers' petitions into a single proceeding (Doc. 10), which it resolved in an order of dismissal on April

[1] "Doc." citations are to docket entries in the consolidated proceeding below, S.D. Fla. Case No. 22-cv-22778, as numbered by the Clerk of the District Court. "Br." references are to the pages of appellants' opening brief.

20, 2023. (Doc. 29.) This order disposed of all the parties' claims and is "a final order which may be appealed." I.R.C. § 7609(h)(1). Taxpayers filed a timely notice of appeal on May 12, 2023. (Doc. 30.) *See* 28 U.S.C. § 2107(b); Fed. R. App. P. 4(a)(1)(B). This Court has jurisdiction under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUE

Whether the District Court was required, before dismissing petitions to quash IRS summonses issued under a facially proper treaty request, to hold an evidentiary hearing into whether foreign officials had made the request in good faith.

STATEMENT OF THE CASE

(i) Course of proceedings and disposition in the court below

Taxpayers each filed a separate petition in the District Court under I.R.C. § 7609(b), seeking to quash summonses the IRS issued to Truist Bank and Wells Fargo Bank pursuant to facially proper requests from the Peruvian tax authority under the U.S.-Peru tax treaty.[2] (Doc. 1; *see* S. D. Fla. Case No. 22-cv-22785, doc. 1; Case No. 22-cv-22777, doc. 1.) The District Court consolidated taxpayers' petitions into a single proceeding based on common questions of law and fact. (Doc. 10.)

The Government moved to dismiss taxpayers' petitions (Doc. 11), and taxpayers countered with a request for an evidentiary hearing on

[2] The treaty's formal name is the "Agreement Between the Government of the Republic of Peru and the Government of the United States of America for the Exchange of Tax Information (1990)." (Doc. 18-1.)

their claims that the Peruvian treaty request was issued in bad faith. (Doc. 15.) Magistrate Judge Goodman recommended granting the Government's motion to dismiss. (Doc. 22.) Over taxpayers' objection, the District Court adopted the magistrate judge's findings and recommendations, granted the United States' motion to dismiss, and denied taxpayers' motion for an evidentiary hearing. (Doc. 29.) Taxpayers now appeal. (Doc. 30.)

(ii) Statement of the facts

1. The U.S.-Peru tax treaty

The United States and Peru "have agreed to provide each other assistance through the exchange of information" in order "to assure the accurate determination and collection of taxes, to prevent tax fraud and evasion, and to develop better sources of information for tax matters[.]" (Doc. 18-1 at 2.) As relevant here, Article 4 of the U.S.-Peru tax treaty requires the U.S. and Peruvian competent authorities—respectively, the IRS and the Superintendencia Nacional de Aduanas y de Administración Tributaria (SUNAT)—to "exchange information to administer and enforce the domestic laws of the [United States and Peru] corresponding to the taxes covered by this Agreement" (Doc. 18-1

at 4), which include Peruvian income taxes. (Doc. 18-1 at 3.) The treaty requires each taxing authority to "adopt[] and implement[] the procedures that are necessary to ensure" the transmission of information "which is likely to be relevant to, and contribute significantly to," *inter alia*, "the determination, assessment, and collection of tax, the recovery and enforcement of tax claims, as well as the investigation or prosecution of tax crimes or crimes involving the contravention of tax administration." (Doc. 18-1 at 4.)

If the IRS determines that SUNAT has made a facially proper treaty request for information governed by the treaty, the IRS must "obtain [the information] and provide it in the same form, as if the tax of [Peru] were the tax of the [United States]." (Doc. 18-1 at 5.) The IRS may therefore use the broad summons authority set out in I.R.C. § 7602. *See Lidas, Inc. v. United States*, 238 F.3d 1076, 1081 (9th Cir. 2001) (discussing similar provision in U.S.-France tax treaty).

Once it obtains the relevant information, the IRS must disclose that information to SUNAT. SUNAT may disclose the information "only to authorities, including judicial and administrative bodies involved in the determination, assessment, collection, and

administration of the taxes which are the subject of" the treaty. (Doc. 18-1 at 6.)

2. IRS summonses issued pursuant to the U.S.-Peru tax treaty

Taxpayers are siblings who are citizens and residents of Peru. (Doc. 22 at 2.) On December 28, 2021, SUNAT, the Peruvian taxing authority, submitted exchange-of-information requests to the IRS seeking information in connection with the Peruvian income tax examinations of Sheyla Dyer Coriat and Piero Martin Dyer Coriat. (Doc. 11, Exs. 2 and 3 ¶3.) Within weeks, on February 8, 2022, SUNAT sent a corresponding exchange-of-information request to the IRS with respect to their brother Samuel Barnaby Dyer Coriat's Peruvian income tax examination. (*Id*., Ex. 1 ¶6.) SUNAT's requests explained that the Dyer Coriat siblings are Peruvian taxpayers and that their 2016, 2017, and 2018 income tax liabilities were under examination by Peru. (*Id*., Exs. 1, 2, and 3 ¶6.) Consequently, SUNAT sought the IRS' assistance to obtain bank records for 2016 through 2018 from taxpayers' U.S. accounts at Truist and Wells Fargo. (*Id*., 11, Exs. 1, 2, and 3 ¶8.)

The IRS (the U.S. competent authority) confirmed with SUNAT that SUNAT "could obtain account information located in Peru in the

context of a domestic examination under Peruvian law and in the normal course of tax administration" and that SUNAT could "obtain, and exchange, bank account information located in Peru pursuant to the U.S.-Peru [tax treaty]." (Doc. 11, Exs. 1, 2, and 3 ¶14.)

The IRS concluded that there was a "reasonable basis to believe that the summons may produce information relevant to Peru's examination." (*Id.*, Exs. 1, 2, and 3 ¶16.) The IRS then honored Peru's request and served summonses on Truist and Wells Fargo on or about August 23, 2022. (*Id.*, Exs. 4, 5, and 6 ¶4.) The summonses requested copies of taxpayers' account opening documents, as well as monthly account statements, certifications of withholding status, and information reflecting amounts withheld for the tax periods from January 1, 2016 through December 31, 2018. (*Id.*, Exs. 4.A, 5.A, and 6.A.)

3. Proceedings in the District Court

Taxpayers timely petitioned the District Court to quash the IRS summonses, arguing, *inter alia*, that the United States had "failed to identify a legitimate good faith purpose for its request," and that the Peruvian government was seeking information it could not legally

obtain under Peruvian law.[3] (*See* Doc. 1 at ¶¶ 11-15.) In particular, taxpayers contended that "the requested information sought by Peru as the requesting nation violates the Peruvian Constitution and applicable Peruvian statutes because it requests certain private information which is precluded under Peruvian law without the Peruvian government complying with certain conditions precedent." (*Id*. at ¶ 14.) Taxpayers' petitions did not assert that the IRS summonses were overbroad. (Doc. 1.)

In its motion to dismiss taxpayers' petitions to quash (Doc. 11), the United States relied on declarations from IRS employees Tina Masuda and Floyd Penn to make the *prima facie* showing required by *United States v. Powell*, 379 U.S. 48, 57-58 (1964)—*i.e.*, that the IRS issued the summonses for a legitimate purpose; the information sought is relevant to that purpose; the IRS does not already possess the information; and the IRS followed the required administrative steps.

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[3] Taxpayers also contended that the summonses "failed to identify the kind of investigation against the Petitioner," and that the requests were inappropriate because the Dyer Coriat siblings were not U.S. taxpayers. As taxpayers have not renewed these arguments in their opening brief on appeal, they are waived. *APA Excelsior III L.P. v. Premiere Techs., Inc.*, 476 F.3d 1261, 1269 (11th Cir. 2007) (this Court will "not consider claims not raised in a party's initial brief").

(Doc. 11, Exs. 1-6.) The United States noted that it is not required to establish the good faith or local legal rights of a foreign treaty partner making the request, but must only show that the IRS acted in good faith in responding to the treaty request. (Doc. 11 at 7, citing *Mazurek v. United States*, 271 F.3d 226, 231 (5th Cir. 2001); *Lidas, Inc. v. United States*, 238 F.3d 1076, 1082 (9th Cir. 2001)).

Taxpayers conceded in response that the "IRS has made its *prima facie* case for enforcement of the summons [under *Powell*] by filing a sworn affidavit by the investigating agent." (Doc. 18 at 2.) They maintained, however, that this was insufficient to demonstrate the good faith of the United States in complying with the treaty request, "in light of the well-documented problems within the Peruvian government and ongoing corruption." (Doc. 18 at 5-8.) Taxpayers requested an evidentiary hearing to demonstrate that "[t]he US-Peru [tax treaty] only permits Peru to request bank information if it complies with its Constitution," which, in taxpayers' view, would establish that the IRS issued the summonses for an improper purpose. (Doc. 18 at 8.) They again made no assertion that the challenged summonses were overbroad. (Doc. 18.)

Magistrate Judge Goodman issued a report and recommendations that the Government's motion to dismiss be granted. (Doc. 22.) Judge Goodman's report noted that no evidentiary hearing was necessary, since taxpayers had "conceded that the IRS has sufficiently established a *prima facie* case for the enforcement of the summonses" and the inquiry they urged into the good faith of the foreign requestor "is not a discretionary decision—it is an inquiry which [the District] Court is prohibited from making." (Doc. 22 at 8.)

In their objection to the magistrate judge's report and recommendations, taxpayers argued for the first time that the IRS summonses were overbroad. (Doc. 25 at 3-6.) The District Court held that taxpayers had failed to preserve this argument because they did not raise it before the magistrate judge, and that in any event, they lacked standing to challenge the scope of a summons served on a third party. (Doc. 29 at 2-3.) Because taxpayers had raised no other meritorious challenge to the magistrate judge's report, the District Court adopted his recommendation and ordered that taxpayers' petitions to quash the IRS summonses be dismissed. (Doc. 29 at 3.)

Taxpayers timely appealed the judgment of the District Court to this Court. (Doc. 30.) They also sought a stay pending appeal of the District Court's judgment (Doc. 31), which that court denied on June 2, 2023 (Doc. 35), and this Court likewise denied on August 11, 2023.

(iii) Statement of the standard or scope of review

This Court "will not reverse an order enforcing an IRS summons unless it is 'clearly erroneous.'" *Presley v. United States*, 895 F.3d 1284, 1288 (11th Cir. 2018), *quoting United States v. Morse*, 532 F.3d 1130, 1131 (11th Cir. 2008). A district court's decision to deny an evidentiary hearing is reviewed for abuse of discretion. *United States v. Clarke*, 573 U.S. 248, 255 (2014).

SUMMARY OF ARGUMENT

The District Court correctly dismissed taxpayers' petitions to quash IRS summonses. To obtain a dismissal of a petition to quash an IRS summons issued at the facially proper request of a treaty partner, the Government must show that it has met the requirements set out in *United States v. Powell*, 379 U.S. 48 (1964). Once the Government has made that minimal *prima facie* showing of the IRS's good faith in issuing the summons, a heavy burden shifts to the petitioner to "show

that the IRS is attempting to abuse the court's process" or has otherwise failed to satisfy the *Powell* factors. *United States v. Stuart*, 489 U.S. 353, 359–60 (1989).

It is undisputed that the Government made the requisite *prima facie* showing here, and taxpayers have made no effort to rebut any of the *Powell* factors. Taxpayers argue that the District Court should have heard evidence regarding their allegations of Peru's bad faith in requesting the summonses. Such evidence, if any, is irrelevant to the inquiry here. That inquiry is whether "the IRS is attempting to abuse the court's process," not whether a treaty partner is attempting to do so. *Stuart*, 489 U.S. at 360. "So long as the IRS itself acts in good faith [under *Powell*] and complies with applicable statutes, it is entitled to enforcement of its summons." *Id.* at 370. Because there is no dispute that the *Powell* factors have been met, and taxpayers have not alleged that the IRS acted in bad faith in issuing the summonses, they have not demonstrated—and cannot demonstrate—any clear error in the District Court's dismissal of their petition to quash.

The District Court did not abuse its discretion in denying taxpayers' request for discovery and an evidentiary hearing on issues

irrelevant to the good faith of the IRS. Nor did that court abuse its discretion in rejecting taxpayers' argument that the summonses were overbroad, which was not timely raised or properly preserved below. The overbreadth argument lacks merit in any event.

ARGUMENT

The District Court correctly dismissed taxpayers' petitions to quash the IRS summonses

A. Introduction: IRS summonses, generally

Congress has given the IRS broad authority to issue summonses requesting "any books, papers, records, or other data which may be relevant" to "determining the liability of any person for any internal revenue tax." I.R.C. § 7602(a); *see United States v. Clarke*, 573 U.S. 248, 250 (2014). The IRS employs this same broad authority "to obtain information requested by" a tax treaty partner. *Lidas, Inc. v. United States*, 238 F.3d 1076, 1081 (9th Cir. 2001). In particular, the U.S.-Peru tax treaty provides that "if the information available in the tax files of the requested State is not sufficient to enable compliance with the request, that State shall take all relevant measures to provide the applicant State with the information requested." (Doc. 18-1 at 4.)

A taxpayer who receives notice that the IRS has issued a summons to a third party requesting the taxpayer's records can petition to quash the summons in a summary district court proceeding. *See* I.R.C. § 7609(b)(2). To prevail, the Government must make a *prima facie* showing that the IRS acted in "'good faith' in issuing the summons." *Lidas*, 238 F.3d at 1081–82; *see Presley*, 895 F.3d at 1289. Specifically, the Government must demonstrate that: "(1) the investigation has a legitimate purpose, (2) the information summoned is relevant to that purpose, (3) the IRS does not already possess the documents sought, and (4) the IRS has followed the procedural steps required by the tax code." *Presley*, 895 F.3d at 1289 (citing *United States v. Powell*, 379 U.S 48, 57–58 (1964)).

The same threshold requirement "applies where the IRS issues a summons at the request of a tax treaty partner." *Lidas*, 238 F.3d at 1082 (citing *United States v. Stuart*, 489 U.S. 353, 370 (1989)). In such a case, "the IRS need not establish the good faith of the requesting nation." *Id.* "'So long as the IRS itself acts in good faith [under *Powell*] . . . and complies with applicable statutes, it is entitled to enforcement

of its summons.'" *Id.* (quoting *Stuart*, 489 U.S. at 370 (alterations in original)).

'The government's burden of showing relevance in this context is slight." *La Mura v. United States*, 765 F.2d 974, 981 (11th Cir. 1985); *see also Mazurek v. United States*, 271 F.3d 226, 230 (5th Cir. 2001). Declarations from the U.S. competent authority and IRS employees are sufficient to establish the Government's *prima facie* case. *See Mazurek,* 271 F.3d at 230; *Lidas*, 238 F.3d at 1082.

Once the Government has made its "minimal" *prima facie* showing, *Mazurek,* 271 F.3d at 230, a court should deny a petition to quash "unless the taxpayer can show that the IRS is attempting to abuse the court's process" or has otherwise failed to satisfy the *Powell* factors. *Stuart*, 489 U.S. at 360; *see also Lidas*, 238 F.3d at 1082. "[T]he taxpayer bears a heavy burden" on rebuttal. *Lidas*, 238 F.3d at 1082 (internal quotation omitted); *Mazurek,* 271 F.3d at 230.

B. Taxpayers have failed to rebut the Government's *prima facie* showing that the summonses were valid

Taxpayers conceded, and the District Court correctly held, that the Government made its *prima facie* showing that the IRS summonses were valid. (Doc. 22 at 4; Doc. 29 at 2.) Taxpayers did not dispute the

facts established in the Government's declarations: namely, that each summons was issued for the legitimate purpose of meeting the United States' treaty obligations; that the information sought could be relevant to the Peruvian tax authority's examination; that neither the IRS nor SUNAT possessed the requested information; and that the IRS had complied with all administrative requirements. (Doc. 22 at 4.)[4]

In their opening brief, taxpayers do not challenge the District Court's conclusion that the summonses are valid, nor do they contend that the IRS acted in bad faith. Those arguments are therefore waived. *See APA Excelsior III L.P. v. Premiere Techs., Inc.*, 476 F.3d 1261, 1269 (11th Cir. 2007). Rather, taxpayers argue only that that the District Court should have held an evidentiary hearing, in light of their allegations of bad faith on the part of the Peruvian government (Br. 4) and the overbreadth of the IRS summonses (Br. 5-6). Taxpayers can show no abuse of discretion in the District Court's denial of their request for an evidentiary hearing on either count.

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[4] The declarations are similar to the declarations and affidavits submitted in other treaty-partner summons cases decided in favor of the Government. *See, e.g.*, *Stuart*, 489 U.S. at 360; *Lidas*, 238 F.3d at 1082; *Mazurek*, 271 F.3d at 230.

1. A treaty partner's reason for requesting an IRS summons is irrelevant to the validity of the summons

As the District Court correctly held, the motivations of the requesting treaty partner do not factor into the court's analysis in a proceeding to enforce (or quash) the resulting summons. Rather, the relevant inquiry under *Powell* is whether "the IRS is attempting to abuse the court's process." *Stuart*, 489 U.S. at 360 (noting that the taxpayers "nowhere alleged that the IRS was trying to use the District Court's process for some improper purpose"). The Supreme Court held in *Stuart* that "[s]o long as the IRS itself acts in good faith [under *Powell*] and complies with applicable statutes" when it issues a summons pursuant to a treaty partner's facially proper request, "it is entitled to enforcement of its summons." *Id.* at 370; *see also id.* at 356.

The Ninth Circuit read *Stuart* to establish a rule that, "where the IRS issues a summons at the request of a tax treaty partner . . . the IRS need not establish the good faith of the requesting nation." *Lidas*, 238 F.3d at 1082. The Fifth Circuit also understood *Stuart* to have held that "[a]s long as the IRS acts in good faith, it need not also attest to – much lest prove – the good faith of the requesting nation." *Mazurek v.*

United States, 271 F.3d 226, 231 (5th Cir. 2001). Similarly, the Tenth Circuit agreed that, in reviewing a summons issued in response to a treaty request by Mexico's taxing authority, "Mexico's good faith is irrelevant; what matters is the IRS's good faith in issuing the summons." *Villarreal v. United States*, 524 F. App'x 419, 423 (10th Cir. 2013). Because taxpayers do not contend that the IRS acted in bad faith, this Court should affirm the District Court's dismissal of their petitions to quash.

2. The District Court did not abuse its discretion in denying taxpayers' request for an evidentiary hearing

The District Court also properly exercised its discretion to deny taxpayers' request for an evidentiary hearing. (*See* Br. 4-6.) *See Tiffany Fine Arts, Inc. v. United States*, 469 U.S. 310, 324 n.7 (1985) (district court acted within its discretion to conclude that an evidentiary hearing on the question of enforcement of an IRS summons was unnecessary). To obtain an evidentiary hearing, a taxpayer must "point to specific facts or circumstances plausibly raising an inference of bad faith. Naked allegations of improper purpose are not enough: The taxpayer must offer some credible evidence supporting his charge."

Clarke, 573 U.S. at 254. If the district court still "is not convinced that the summons[ ] w[as] issued for a proper purpose," "[d]iscovery is then warranted." *United States v. Stuckey*, 646 F.2d 1369, 1374 (9th Cir. 1981).

A person seeking to quash a summons thus is not entitled to an evidentiary hearing unless he can point to credible evidence raising an inference of bad faith on the part of the IRS.[5] Because taxpayers did not offer any credible evidence that the IRS acted in bad faith (Doc. 29 at 2, Doc. 22 at 8), there was nothing to hear at an evidentiary hearing, and the District Court correctly rejected taxpayers' request. *See Mazurek*, 271 F.3d at 235 (holding "that the district court acted well within its discretion in denying discovery and an evidentiary hearing"). This was not the exceptional summary summons proceeding that warrants an evidentiary hearing or discovery. *See Chen Chi Wang v. United States*, 757 F.2d 1000, 1004 (9th Cir. 1985) ("The district court in a summary summons enforcement proceeding has great discretion to

[5] The case on which taxpayers rely (Br. 5) for the contrary proposition, *Nero Trading LLC v. U.S. Dep't of Treas.*, 570 F.3d 1244, 1249 (11th Cir. 2009), was abrogated by the Supreme Court and is no longer good law. *See Clarke,* 573 U.S. at 254.

restrict or deny discovery; discovery in such a proceeding is the exception rather than the rule.").

Nor is there merit to taxpayers' afterthought of an argument that the summonses were overbroad, because the summonses allegedly requested a more complete set of bank records than those indicated on the initial requests from SUNAT. (Br. 5.) The District Court correctly concluded that, because taxpayers did not raise this argument before the magistrate judge, the court was not required to consider it. (Doc. 29 at 2-3.) *See Williams v. McNeil*, 557 F.3d 1287, 1292 (11th Cir. 2009) (district court has discretion to decline to consider a party's argument when that argument was not first presented to the magistrate judge).

Taxpayers raised their overbreadth argument for the first time in their objection to the magistrate judge's report and recommendations. (Doc. 25 at 3-6.) The District Court observed (Doc. 29 at 2-3) that taxpayer's argument relied on a Peruvian government report that was issued on November 8, 2022 (Doc. 25 at 3-5), and that taxpayers could have, but did not, raise the alleged overbreadth of the summonses in their response to the Government's motion to dismiss, which they filed on December 12, 2022 (Doc. 18). Taxpayers asserted that they had

"filed a constitutional claim in Peru" (Doc. 25 at 3) and that the report on which they relied was "the Peruvian tax authority's response" (Doc. 25 at 4). Since taxpayers offered no explanation for their further assertion that they "receiv[ed] this response in the last number of days" (Doc. 25 at 5; *see* Br. 6), the District Court correctly found that they did not "provide any reason why they may have been unable" to rely on the November 8 report in their December 12 reply. (Doc. 29 at 3.)

Moreover, taxpayers' claim of overbreadth is incorrect as a matter of law. A summons is not overbroad simply because it seeks additional information that the IRS believes is relevant to a treaty request. Rather, a "summons is overbroad if it does not advise the summoned party what is required of him with sufficient specificity to permit him to respond adequately to the summons." *United States v. Medlin*, 986 F.2d 463, 467 (11th Cir. 1993) (internal quotation omitted). Other than a non-specific suggestion that it is somehow "difficult to determine the IRS's intentions in issuing the summons and whether it was appropriate under the treaty" (Br. 5), taxpayers do not allege that the summonses here were in any way unclear on the information sought.

The District Court correctly held that taxpayers "lack standing to object to any purported overbreadth of the summonses," because the summonses were "directed to third parties—specifically, the banks holding the Petitioners' accounts—not to the Petitioners themselves." (Doc. 29 at 2.) *See* S. Rep. No. 94-938 at 370–71 (2d Sess.) (1976), *reprinted in* 1976 U.S.C.C.A.N. 2897, 3205 (a taxpayer entitled to notice of IRS third-party summons will "not be permitted to assert as defenses to enforcement issues which only affect the interests of the third-party record keeper"). Taxpayers complain that this standing requirement "disregards the fundamental principles of due process" and exposes them to invasions of privacy (Br. 6), but do not dispute that the requirement applies to them, nor that they fail to meet it.

At all events, privacy concerns do not impede the enforcement of an IRS third-party summons: as this Court has held, "a party lacks a reasonable expectation of privacy under the Fourth Amendment in information 'revealed to a third party and conveyed by [that third party] to Government authorities, even if the information is revealed on the assumption that it will be used only for a limited purpose and the confidence placed in the third party will not be betrayed.'" *Presley*, 895

F.3d at 1291, quoting *United States v. Miller*, 425 U.S. 435, 443 (1976).

Taxpayers' objections to the summonses are thus without merit.

CONCLUSION

The judgment of the District Court should be affirmed.

Respectfully submitted,

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SEPTEMBER 15, 2023

CERTIFICATE OF COMPLIANCE

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(s) /s/ Julie Ciamporcero Avetta

Attorney for United States

Dated: September 15, 2023

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 2023, this brief was filed with the Clerk of the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system, and seven (7) paper copies were sent to the Clerk by First Class Mail. All parties are CM/ECF users and have been served by CM/ECF.

/s/ Julie Ciamporcero Avetta
Julie Ciamporcero Avetta
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